

MAY 22 2006

PATENT APPLICATION
PO-7785/LeA 36,414**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICATION OF)	
MARKUS OBERTHUR)	GROUP NO.: 1713
SERIAL NUMBER: 10/694,584)	EXAMINER: ROBERT D. HARLAN
FILED: OCTOBER 27, 2003)	
TITLE: ANTI-AGING AGENTS FOR)	
RUBBER VULCANIZATES)	
BASED ON ORGANIC)	
COMPOUNDS CONTAINING)	
CONJUGATES AZADIENES)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Box AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

Applicants hereby request review of the final rejection in the above-identified application. No amendments are being filed herewith. This request is being filed with a notice of appeal. The review is requested for the reasons stated in the attached remarks.

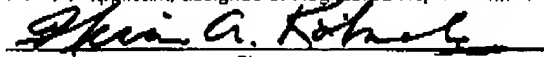
The Commissioner is hereby authorized to charge payment of any fees associated with this communication to the Credit Card as indicated by the attached Form PTO-2038. This paper is also authorization to charge any insufficiency of fees due with this filing to Deposit Account Number 50-2527.

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Nicanor A. Köhncke, Reg. No. 57,348

Name of applicant, assignee or Registered Representative



Signature

REMARKS

Per the outstanding Office Action, dated February 23, 2006, claims 1-2 and 4-6 were rejected and the rejection made final. Claims 1-2 and 4-6 stand rejected under 35 USC 102(b) as being anticipated by Becke et al., US Patent No. 5,965,678 ("Becke"). No other rejections are presently being applied to the claims.

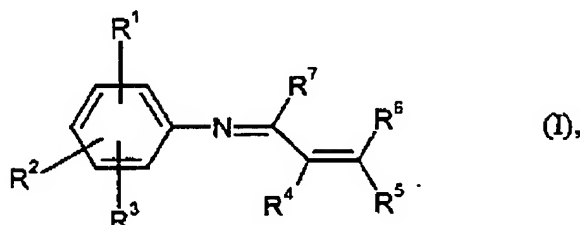
Clear Errors In Establishing Prima Facie Rejections:

- A. Becke et al. fail to anticipate the present invention under 35 USC 102(b) since the reference fails to disclose the azadiene anti-aging agent included in all of the present claims and instead discloses, at most, a monoazadiene metal-complex polymerization catalyst; therefore, the reference clearly fails to either expressly or inherently meet all the presently claimed elements of the invention.

35 USC 102 Rejections:

Claims 1 and 5 respectively recite, *inter alia*, "A method for reducing the aging characteristics of a rubber vulcanizate comprising admixing an anti-aging agent, based on organic compounds comprising azadiene groups of the general formula (I)" and "A rubber mixture comprising at least one rubber monomer, at least one anti-aging agent and a vulcanizing agent, wherein the anti-aging agent is based on organic compounds comprising azadiene groups of the general formula (I)". As a result of their dependence from the above claims, all the claims presently include the azadiene compounds as set forth in the general formula I.

Formula I sets forth azadiene compounds of the following general form:



(R1-R7 are defined in the claims)

As the Office is aware, at the very least *prima facie* “[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction.” W.L. Gore & Associates, Inc. v. Garlock, 721 F.2d 1540, 1554 (Fed. Cir. 1983); see also In re Marshall, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).

As best understood, Becke relates to “[a] catalyst system based on monoazadiene metal complexes and their use for the polymerization of unsaturated compounds, especially for the polymerization and copolymerization of olefins and/or dienes.” (Col. 1, Lines 4-8). The monoazadiene metal complexes as used in Becke are generally defined by the formulae therein (Formula I – Formula VIII). Each of these formulas is a metal based complex. Becke simply fails to disclose the anti-ageing azadiene compounds as presently claimed. Instead, Becke appears to disclose metal complex polymerization catalysts, wherein the metal complex includes a monoazadiene group. The mere fact that a monoazadiene is a part of the metal complex structure does not negate the fact that the structure of the polymerization catalyst is nevertheless a metal complex compound. Such a metal complex, whether comprising a monoazadiene or not, does not *per se* teach or suggest azadienes. This is especially the situation where the metal complex is used as a polymerization catalyst. It is therefore submitted the citation of the same as teaching a non-metal complex azadiene

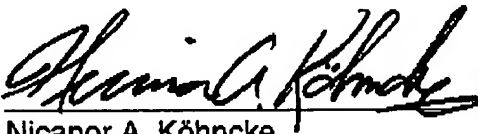
used for improving the aging characteristics of rubber mixtures and/or a rubber mixture thereof is improper.

In support of the rejections the Office provides that the above elements of Claims 1 and 5, as well as the remaining elements of the claims, are taught by Becke, because "Becke teaches the anti-aging of the present claims as part of a catalyst. See Beck[e], col. 7, line 26 through col. 8, line 40. The use of the catalyst as a part in polymerizing olefins and dienes to produce rubbers are clearly taught by Becke. See Becke Claims." (Office Action at Pages 2-3) After reviewing the referenced sections in light of the Office's view thereof, Applicants must respectfully disagree with the Office's assertion of anticipation.

The referenced sections appear to provide for "[t]he preparation of the monoazadiene metal complexes" (col. 7, lines 26-27) and the use of the prepared "[c]atalyst system for the polymerization of unsaturated compounds, especially of olefins and dienes" (Col. 7, lines 58-60) It appears Becke also provides that the metal complex catalysts are suitable for preparing "[r]ubbers based on copolymers of ethylene with one or more of the [alpha]-olefins and dienes mentioned." (Col. 8, lines 5-7) However, what is disclosed remains solely based on a metal complex and fails to teach or suggest the presently claimed azadiene compound of the invention, e.g. an anti-ageing agent based on conjugated azadiene compounds and/or a rubber mixture comprising the same.

Simply the reference fails to relate to, teach, or suggest to one skilled in the art the azadiene of formula I as set forth in the present claims. This precludes necessary showing for a *prima facie* anticipation rejection. Therefore, Applicants submit the present rejections should be withdrawn.

Respectfully submitted,

By 
Nicanor A. Köhncke
Attorney for Applicants
Reg. No. 57,348

May 22, 2006

LANXESS CORPORATION
111 RIDC Park West Drive
Pittsburgh, Pennsylvania 15275-1112
(412) 809-2234
FACSIMILE PHONE NUMBER:
(412) 809-1054

/lmr

s:\law shared\shared\mk\patents\7785\pre-appeal brief request for review (may 2006).doc

PO-7785

5